

FILED
JAN 03 2011
PATRICK E. DUFFY, CLERK
By DEPUTY CLERK, MISSOULA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

HELENA DIVISION

KAREN WILKER DANIEL,)	CV 10-43-H-DWM-RKS
)	
Petitioner,)	
)	
vs.)	ORDER
)	
MIKE FERRITER; MONTANA)	
DEPARTMENT OF)	
CORRECTIONS; ATTORNEY)	
GENERAL OF THE STATE OF)	
MONTANA,)	
)	
Respondents.)	
_____)	

This matter was commenced by the filing of a Petition Under 28 U.S.C. § 2254 for writ of habeas corpus on September 13, 2010. After the Petitioner responded to an order to show cause, Magistrate Judge R. Keith Strong entered his Findings and Recommendations on November 16, 2010. Judge Strong found that all of Petitioner's claims are procedurally defaulted, and because the default is

unexcused, the petition is barred in its entirety.

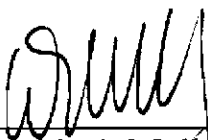
Petitioner Daniel did not timely object and so has waived the right to de novo review of the record. 28 U.S.C. § 636(b)(1). This Court reviews the Findings and Recommendation for clear error. McDonnell Douglas Corp. v. Commodore Bus. Mach., Inc., 656 F.2d 1309, 1313 (9th Cir. 1981). Clear error exists if the Court is left with a “definite and firm conviction that a mistake has been committed.” United States v. Syrax, 235 F.3d 422, 427 (9th Cir. 2000). I can find no clear error with Judge Stong’s recommendation (dkt #8) and therefore adopt it in full.

IT IS HEREBY ORDERED that the Petition (dkt #1) is DISMISSED WITH PREJUDICE as procedurally barred.

The Clerk of Court is directed to enter by separate document a judgment in favor of Respondents and against Petitioner.

A certificate of appealability is DENIED.

Dated this 3rd day of January, 2011.



Donald W. Molloy, District Judge
United States District Court